Office of the Schools Adjudicator

Determination

Case reference:	**ADA3684**
Objector:	**An individual**
Admission authority:	**The academy trust for The Coopers' Company and Coborn School, Upminster, London Borough of Havering**
Date of decision:	**27 July 2020**

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2021 determined by the academy trust for The Coopers' Company and Coborn School, Upminster.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by an individual (the objector), about the admission arrangements (the arrangements) for The Coopers' Company and Coborn School (the school), an academy school with a Christian religious character for boys and girls aged 11 to 18, for September 2021. The objection is to the inclusion of a priority for places for children of former students.

2. The local authority (LA) for the area in which the school is located is the London Borough of Havering. The LA is a party to this objection. Other parties to the objection are the academy trust (the trust) for the school and the objector.

Jurisdiction

3. The terms of the Academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the academy trust (referred to on occasion as the 'governing board'), which is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 12 May 2020. The objector has asked to have his identity kept from the other parties and has met the requirement of regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of his name and address to me. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

5. The documents I have considered in reaching my decision include:

a. a copy of the minutes of the meeting of the academy trust at which the arrangements were determined;

b. a copy of the determined arrangements, which include the supplementary information form (SIF) and the "*Organisation or Group Religious Reference Form*";

c. the objector's form of objection dated 12 May 2020, further comments and supporting documents;

d. the school's response to the objection, including details of the consultation undertaken prior to the determination of the arrangements;

e. details of the allocation of places for admission over the past three years;

f. the school's OfSTED reports published in 1997 and 2003;

g. a report of the Local Government Ombudsman into a complaint against the school, published in 2005; and

h. the determination of the adjudicator relating to the school (ADA2286) that was published in July 2012.

The Objection

6. The objector argues that the oversubscription criterion giving priority for places to children of former students of the school does not comply with paragraph 1.8 of the School Admissions Code (the Code), which begins,

> "*Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation.*"

7. He also believes that this criterion breaches several prohibitions in paragraph 1.9 of the Code, which states, so far as is relevant here, that admission arrangements **must not**:

> "*d) introduce any new selection by ability*";
>
> "*f) give priority to children according to the occupational, marital, financial or educational status of parents applying*"; or
>
> "*i) prioritise children on the basis of their own or their parents' past or current hobbies or activities.*"

Other Matters

8. There are two matters in the determined arrangements that appeared to me not to conform with the requirements relating to admissions. First, contrary to paragraph 1.9 (i), the third option for meeting the "*religion requirement*" ("*participation…in an organisation or group*") appears to prioritise children on the basis of their current activities, such activities not being religious activities laid out by the body or person representing the religion of the school.

9. Second, contrary to paragraph 1.37 of the Code, the effect of the religion requirement appears to be:

(i) to give some children not of the faith of the school (that is, those of other "*world faiths*" who meet the religion requirement) a higher priority than some looked after children and previously looked after Christian children who do not meet the religion requirement; and

(ii) to give some children not of the of the faith of the school who are not looked after a higher priority than some looked after and previously looked after children of other or no faith.

Background

10. The Published Admission Number (PAN) for admission to year 7 in September 2021 is 210. Historically, the school is heavily oversubscribed. For admission in September 2020, 656 parents named the school as one of their preferences. The arrangements give priority first to applicants who meet what is termed "*the religion requirement*", using the other

oversubscription criteria to distinguish between them. Any remaining places are then allocated to applicants who do not meet the religion requirement, using a number of the same oversubscription criteria.

11. The religion requirement is met by applicants who "*are able to demonstrate their child is associated with a religious tradition of one of the major world faiths (Christianity, Buddhism, Hinduism, Islam, Judaism and Sikhism), as measured by one of the following*:"

- "…*baptism, christening, confirmation, membership or initiation into the tradition of a world religion and continuous subsequent attendance, at least quarterly, for a minimum of two years prior to application at a place of worship*"; or
- "*attendance on at least 6 occasions a year at a place of worship associated with a religious tradition for a minimum of two years prior to application*"; or
- "*participation for at least two years on a weekly basis in an organisation or group that incorporates attendance at a place of worship on at least 4 occasions a year*".

The arrangements set out the evidence required to verify that the applicant meets this requirement.

12. Places are allocated to applicants who meet the religion requirement, using the oversubscription criteria that I summarise below. Up to 189 places are allocated in accordance with criteria 1 to 6 below, which are stated in order of priority, and the remaining 21 places (ten per cent of the total) are allocated in accordance with criterion 7:

1. Looked after children and previously looked after children.
2. Children with an exceptional medical or social need.
3. Children of staff at the school.
4. Children whose siblings are current or former students of the school.
5. Children of former students (maximum of ten places).
6. Children who reside in certain areas, in proportions specified in detail in the arrangements (70 per cent of these places are allocated based the distance from the school of the applicant's home address).
7. Children selected on the basis of aptitude for sport or music.

The arrangements then state that,

> "*Should any places remain unfilled these will be offered to applicants that do not meet the religion requirement. These applicants will be ranked using the same oversubscription 1-6 above*."

However, the arrangements make clear that over the past five years, no students have been admitted who do not meet the religion requirement.

13. The school consulted on a change to its arrangements from those in place for admission in September 2020. The outcome was to increase the PAN to 200 to 210 and to

reduce the required attendance under the third religion requirement option from six to four occasions a year.

14. The criterion to which the objection relates ("children of former students") was considered by an adjudicator in July 2012 (reference:ADA2286). The adjudicator found that the way in which the criterion was worded at that time did not "*enable parents to assess the likelihood of gaining a place*" but did not consider that paragraph 1.8 was breached or that the criterion itself was not in conformity with the requirements relating to admissions.

Consideration of Case

15. The objector begins his objection by referring to paragraph 1.8 of the Code and remarking that,

> "*Having an advantage in school admissions based on who your parents are does not seem me to be reasonable and compatible with the standards of modern society. It would not be seen as reasonable to be offered a job or a place at a university based on who one's parents are*."

The Code requires oversubscription criteria to be "*reasonable*" but does not define the word. I take it to mean both that the admission authority must be able to explain a sensible reason why an oversubscription criterion is used and that the effect of the criterion is not unreasonable, that is, that other applicants are not disadvantaged in a way that would be regarded as irrational.

16. In its response to the objection, the trust, through its legal representative, gives a detailed account of its reasons for including the criterion that gives priority to some children of former students. This explains that the school was founded in 1536 to establish an educational setting for disadvantaged boys in the East End of London and says,

> "*The School has a strong community and as a historic school with a strong ethos wants to retain its links to previous students. One way (among many) that it achieves this is to retain a limited criterion*."

The response also makes reference to work experience and career mentoring provided by "alumni" and the active recruitment of former students to the governing board.

17. Commenting on the school's rationale for this criterion, the objector also says that,

> "*there are many quite legitimate and praiseworthy ways in which the alumni can continue their relation with the school which do not involve admissions*."

This is undoubtedly true, but the giving of some priority for places to children of former students is not irrational or illogical. Although the practical contribution of former students is valued, priority is not given on the basis of any support parents may give to the school, which is prohibited by paragraph 1.9 e) of the Code. Indeed, if there are more than ten applicants under this criterion, places are allocated by random allocation.

18. I am not convinced that the comparison the objector makes with securing a job or a place at university is entirely apposite. The person specification for a job generally deems certain skills and / or qualifications to be essential for an applicant to be able to be appointed. Entrance to university almost always demands an academic threshold to be achieved. I agree with the objector that to ignore such requirements and to offer a job or university place "*based on who one's parents are*" might well be seen as unreasonable. However, school admissions (except in relation to schools with varying elements of selection – ten percent by aptitude for music and sport here) are not based on skills or qualifications. They are rather based on a range of other criteria. At this school, a large proportion of the places (92 for admission in September 2020) is, in fact, allocated on the basis of family relationships, that is, to siblings of current and former students, criteria that are expressly deemed as acceptable in the Code (paragraph 1.11). These considerations lead me to conclude that the "children of former students" criterion satisfies the basic test of reasonableness.

19. As to whether the use of this criterion is unreasonable in its effect, the objector makes further points. He says,

> "*given that the proportion of ethnic minority and foreign-born people in the UK has significantly changed over time, this criterion indirectly if unintentionally, discriminates against these groups*."

The objector recognises that this matter was considered in ADA2286, but argues that the focus in that determination was on recent arrivals to the UK. The objector in the current case points out,

> "*the criterion does not affect just recent arrivals, but anyone whose parents were born outside the UK, likely 30 or 40 years ago*."

He also suggests that, because of the higher priority given to siblings of current and former students, the effect of the criterion is greater than may appear to be:

> "*this means that the number of pupils admitted would not be just the 10 admitted in that year, but the siblings of those admitted on the basis of their parents' attendance in previous years, potentially 20-30 of those admitted*."

20. In response, the trust refers to an analysis it has made of its admissions data,

> "*which reveals in the last three years of admissions (2017, 2018 and 2019) only two children who were admitted under the sibling criteria had siblings that were admitted under the criterion for parents who are former students*."

The trust therefore rejects the objector's suggestion that the number of children admitted, either directly or indirectly, as a consequence of the 'children of former students' criterion exceeds five per cent of those on roll. I see no reason to dispute this.

21. The objector also draws my attention to the school's OfSTED report of 2003, which shows that 88.9 per cent of the school roll at that time was classified as "*White – British*." He says,

> "*It is likely that this proportion was even higher in previous years. In practice, then, the overwhelming majority of those who benefit from the former students' criterion would be white British. The criterion is therefore indirectly disadvantaging those of any other ethnic origin… If a school selected 5% of its pupils on the basis of them being white British this would not be acceptable under the code, even if the rest of its admissions criteria were open to pupils of any ethnic origin, and while I accept that that is not the intention of this criterion, it is the practical effect of it*."

I note that the school's OfSTED report of 1997, also supplied by the objector, states that,

> "*About ten per cent of the pupils are from a minority ethnic background*."

In my view, this represents the situation almost a generation ago when parents of children applying for a place in September 2021 would have been attending the school.

22. In its response, the trust emphasises that the ten pupils admitted under this criterion represent less than five per cent of the PAN. The trust does not hold data on the background of those admitted as children of former students, but points out that "*28% of the student population come from BAME* [Black, Asian and minority ethnic] *groups compared to 8.4% of the local area*."

23. Again, there are some differences between the statistics supplied by the parties. The objector points to data from the 2011 census showing that 17 per cent of the population of the London Borough of Havering were from minority ethnic groups. In response, the trust points out that the school is located in Upminster, which is less diverse than the borough as a whole. At the 2011 census, 92 per cent of the population of Upminster were classified as "White – British."

24. Referring to determination ADA2286, the trust acknowledges that the decisions of adjudicators do not set legal precedents but it nevertheless argues,

> "*The Objector has not provided any change in the law or new facts that justify a departure from the previous decision. To do otherwise would risk the OSA's decision being considered irrational or indeed breach the legitimate expectation that the School has in keeping the same criteria following the previous OSA determination which found the criteria to be lawful*."

25. I agree with the objector that he has mounted a broader argument than his counterpart in ADA2286, suggesting that the criterion affects more than just recent arrivals to the UK; he says it also disadvantages those who were born outside the UK several decades ago. In fact, I would go further. The criterion could also be said to disadvantage any parents who, over the last generation, have moved from other parts of the Britain to the East London and South Essex area and could not have attended the school when living in

their previous locations. Whilst not bound by her decision, I consider the adjudicator's reasoning in ADA2286, in respect of recent arrivals, to apply equally to the objector's argument in this case:

> "*there would be a similar impact on families moving into the area regardless of their ethnicity and therefore I do not agree with the objector that newly arrived children from ethnic groups would be particularly disadvantaged in a way that singles them out as a group from other children moving into the area, from within the country."*

26. I should pause here to address the objector's specific point that "*If a school selected 5% of its pupils on the basis of them being white British this would not be acceptable under the code".* It would, in fact, amount to unlawful discrimination on the basis of race if any school were to have such an oversubscription criterion. However, the school does not do this. It has a criterion – being a child of a former student - which is applied to all applicants. This criterion is not based on race. There is accordingly no direct discrimination on the basis of race. The criterion can be satisfied only by those whose parent attended the school and such children may be more likely to be "White – British" than other applicants. Any discrimination would accordingly be indirect and it is a defence against indirect discrimination if the criterion is a proportionate means of achieving a legitimate aim. As I have made clear above, I consider the school's aim to be legitimate and turn now to whether its approach is proportionate.

27. The practical effect of the criterion in question is to reduce the number of places available based on the residence of applicants (the sixth oversubscription criterion) by a relatively small amount. The arrangements provide for 70 per cent of the places allocated by reference to residence to be based on the distance an applicant lives from this school. Over 50 places were allocated to this group for admission in September 2020. Therefore, if the fifth criterion did not exist, the majority of the ten places that would have been allocated under that criterion would instead be allocated to local children under the sixth criterion (that is, seven places, 70 per cent of the total).

28. As the proportion of the school's roll that was from ethnic minority groups a generation ago was around ten per cent, it is reasonable to assume that, over time, a similar proportion of children will be admitted under the "children of former students" criterion. By way of comparison, the proportion of children from ethnic minority groups living in the area close to the school from which children are admitted on the basis of residence is not, in my view, significantly different: eight per cent in Upminster itself and 17 per cent in the London Borough of Havering as a whole. In the light of these figures, I conclude that the fifth criterion does not make a great difference to the proportion of "White – British" children admitted to the school. Put another way, if it did not exist, the ethnic make-up of the school is unlikely to be altered to any significant extent. I do not consider, therefore, that the fifth criterion is indirectly discriminatory on racial grounds in its effect.

29. My decision on this first part of the objection is that the "children of former students" criterion is a reasonable one and it does not discriminate unlawfully against a particular group of applicants. As with all oversubscription criteria, it necessarily disadvantages

applicants who do not meet that criterion, but I consider that its overall effect on the pattern of admissions to the school is not an unreasonable one, taking into account the numbers of applicants to whom it relates. It is possible that I might have come to a different conclusion if it were proposed that a significantly larger number of applicants should be admitted under this criterion. I do not uphold this aspect of the objection.

30. I turn now to the second ground of the objection, that is, that the fifth oversubscription criterion breaches various prohibitions contained in paragraph 1.9 of the Code. This part of the Code was not mentioned by the objector in ADA2286.

31. First, the objector suggests that the "children of former students" criterion introduces "*new selection by ability*", which is prohibited paragraph 1.9 d). In his objection, he says that he understands that in the past the school selected pupils on the basis of ability. He argues,

> "*Accordingly, the criterion indirectly selects by ability, but by that of the parents rather than by the children*."

In subsequent correspondence, the objector points out that an interview was at one time part of the school's admission arrangements, "*with academic ability being one of the criteria assessed*." The use of interviews is now prohibited by paragraph 1.9 m) of the Code and plays no part in the school's determined arrangements.

32. In response, the trust emphasises that the school was not designated as a grammar school and was therefore not permitted to select its intake on the basis of high academic ability. It,

> "*categorically did not select the most able students as a grammar school would but developed an admissions process that encouraged a diverse mix of students with a range of interests and abilities*."

I note that the report of the school's OfSTED inspection published in 1997, when the interviewing of applicants was taking place, found that "*attainment on entry is well above national averages*."

33. In my view, the plain reading of paragraph 1.9 d) is that the selection by ability that is prohibited relates to the ability of the child seeking a place at the school. I do not agree with the objector that this prohibition necessarily extends to the giving of priority to children whose parents were selected by ability. However, I am not required to come to a firm judgment on the extent of the prohibition because, despite the academic profile of its intake, the school was not designated as selective at the time when any parents of children currently applying for places at the school would have been admitted. Therefore, this ground of objection is not well-founded and I do not uphold it.

34. The objector also draws attention to paragraph 1.9 f), which prohibits the giving of priority "*according to the…educational status of parents applying.*" He points to the very high academic achievements of students at the school, mentioned in successive OfSTED reports and the national press. He says,

"*The presumption must be that the educational status of past pupils is considerably higher than the average and so favouring children of former pupils does select on the basis of the educational achievement of the parents*."

35. The Code does not explain what is meant by "educational status" but I am inclined to agree with the objector that it does relate to educational achievement, including qualifications obtained at school and in further and higher education. To take such matters into account is prohibited. The trust makes clear that the "children of former students" criterion does not do this:

"*The School does not select children on the basis of their parent's grades or ability*."

I agree that this is so. While it may well be the case that a majority of former students of the school achieved better educational outcomes than national averages, this will not be true for every one of them. It is simply past attendance at the school that is taken into account under the "children of former students" criterion. I do not consider that having attended a particular school confers an "educational status" within the meaning of paragraph 1.9 f). I do not uphold the objection on this ground.

36. In the final part of the objection, the objector refers to paragraph 1.9 i), which prohibits admission authorities prioritising children,

"*on the basis of their own or their parents' past or current hobbies or activities.*"

I shall have more to say about this later under "*Other Matters*" but, again, the objection itself relates to the way in which former students were prioritised for places at the school. The objector draws attention to a report of the Local Government Ombudsman (LGO) on the admission practices of the school, published in 2005. At that time, an oversubscription criterion gave priority to children who attended a uniformed organisation, had achieved proficiency in playing a musical instrument, attended a drama or dance group, or participated regularly in competitive sport. The objector says,

"*Assuming that this also occurred prior to that time, then the criterion* ["children of former students"] *indirectly selects on parents' past hobbies and activities*."

37. In response, the trust says that the criterion in question applied for a short period of time and "*its actual use was limited*." This is not strictly true, as the LGO report shows that, at least in 2005, the oversubscription criteria operated in such a way that taking part in at least two of the activities listed above was a threshold all applicants needed to meet in order to be allocated a place. The trust also says that it does not,

"*ask for any information on parents' past hobbies on the application form*."

38. The objector is right in pointing out that it was necessary in the past for applicants to the school to demonstrate participation in certain activities in order to be allocated a place. However, I do not consider that this renders the "children of former students" criterion in breach of paragraph 1.9 i). The fact that, at the age of eleven, a parent must have taken part in certain activities does not amount to prioritising children for places in the way the

Code prohibits. The criterion does not refer to any hobbies or activities that a parent might have participated in a very long time ago. In my view, it is oversubscription criteria that mention specific hobbies or activities that fall foul of this provision of the Code. I do not uphold the objection on this ground.

Other matters

39. The trust responded promptly to address the two matters I considered under section 88I of the Act. In respect to the first, which related to the third means of satisfying the "*religion requirement*", it says,

> "*the School accepts that the drafting of this requirement could technically lead to membership of a non-religious group coming within the criteria*."

This was precisely my concern: to prioritise children on the basis of their current activities does not comply with of paragraph 1.9 i) of the Code.

40. The trust continues,

> "*This was not the purpose of the third element of the religious criteria and as such the School would be willing to amend the Arrangements to remove the third option for meeting the religious requirement, leaving only the other two*."

I consider that removing the third element of the religion requirement would be an appropriate way of dealing with this breach of the Code's requirements.

41. The second matter concerned looked after children and previously looked after children. The relevant sections of paragraph 1.37 of the Code read as follows:

> "*Admission authorities for schools designated with a religious character ….**must** give priority to looked after children and previously looked after children of the faith before other children of the faith. Where any element of priority is given in relation to children not of the faith they **must** give priority to looked after children and previously looked after children not of the faith above other children not of the faith*."

The school has a Christian religious character but gives priority to children both of the Christian faith and other world religions who meet the religion requirement. Looked after and previously looked after children who meet the religion requirement are given the first priority in the oversubscription criteria; looked after and previously looked after children who do not meet the religion requirement are considered after all applicants who do.

42. It is possible that some looked after or previously looked after children, baptised as Christian, might not have been able to meet the worship attendance requirements. Such children would have a lower priority under the school's admission arrangements than other Christian children who do meet the religion requirement. This is in breach of the first sentence of the extract from paragraph 1.37 of the Code quoted above.

43. Furthermore, children of world religions other than Christian (that is, not of the faith of the school) who meet the religion requirement have a higher priority for places than looked after and previously looked after children not of the faith of the school who do not meet the religion requirement. This does not comply with the second sentence from paragraph 1.37 above.

44. In response, the trust explained that, in practice, all looked after children are given first priority. It agreed that the wording of the arrangements does not comply with paragraph 1.37 and undertook to "*amend the Arrangements to make clear that all looked after children will be accepted before that of children fulfilling the faith requirements*." Although it does not say so explicitly in its response, I am assuming the trust prioritises all previously looked after children as well as looked after children, since the arrangements themselves cover both looked after and previously looked after children, as the law says they must. Provided all previously looked after children are included in the amendment as well, this will ensure compliance with the Code.

45. While I note the trust's comments about what it actually does, I must emphasise the importance of admission arrangements – especially those for very popular, very oversubscribed schools – being accurate in their references to looked after and previously looked after children. Any parent of such a child looking at these arrangements would have reasonably concluded that if the child concerned did not meet the religion requirement he or she would not have priority for a place. This could in turn perhaps, and very unfortunately, inhibit the parent from applying for a place at the school.

Summary of Findings

46. The criterion that gives priority to ten applicants as "children of former students" is reasonable in its extent and does not have the effect of discriminating indirectly on racial grounds. It does not constitute new selection by ability or give priority according to the educational status of parents or on the basis of their past hobbies or activities. The criterion does not breach the requirements relating to admissions; I do not uphold the objection.

47. There are other ways in which the arrangements do not comply with the Code. The trust has undertaken to make the amendments that are necessary.

Determination

48. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2021 determined by the academy trust for The Coopers' Company and Coborn School, Upminster.

49. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

50. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

Dated: 27 July 2020

Signed:

Schools Adjudicator: Peter Goringe